

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7132

Petition of Central Vermont Public Service Corporation)
for authority to condemn an easement right in property)
owned by Douglas M. and Leslie Lewis, located in the)
Town of Pomfret, Vermont, for the purpose of providing)
electric service to the Joseph & Terri Davis property)

Hearing at
Woodstock, Vermont
March 28, 2006

Order entered: 6/20/2006

PRESENT: Judith M. Kasper, Esq.
Hearing Officer

APPEARANCES: Carolyn Browne Anderson, Esq.
for Central Vermont Public Service Corporation

Douglas M. and Leslie Lewis
Pro Se

Kirk Kardashian, Esq.
Wright Reeves & Vollers
for Joseph and Terri Davis

June Tierney, Esq.
for Vermont Department of Public Service

I. INTRODUCTION

This docket concerns a petition brought by Central Vermont Public Service Corporation ("CVPS"), pursuant to 30 V.S.A. § 112, requesting that the Public Service Board ("Board") adjudge CVPS entitled to condemn certain property located in the Town of Pomfret, Vermont, owned by Douglas M. Lewis and Leslie Lewis.

On October 24, 2005, CVPS filed a Petition for Condemnation with the Board.

On December 20, 2005, a prehearing conference in this docket was held at the Center Building in North Pomfret, Vermont. A site visit immediately followed the prehearing conference. At the prehearing conference, upon request of the parties, the proceeding was bifurcated so as to address first those issues related to the necessity for the requested taking, and later, those issues related to valuation.

On March 28, 2006, a technical hearing on the issue of necessity was held at the Woodstock Town Hall in Woodstock, Vermont.

On May 24, 2006, a stipulation between CVPS, Douglas and Leslie Lewis, and the Joseph and Terri Davis Family Trust ("Stipulation") was filed in settlement of this docket.

Pursuant to 30 V.S.A. § 8, and based on the record and evidence before me, I present the following findings of fact and conclusions of law to the Board.

II. FINDINGS

1. In June 2005, CVPS received an application from William Russell, on behalf of Joseph Davis and Terri Davis, requesting that CVPS provide electric service to property that had been conveyed from Mr. Russell to the Joseph and Terri Davis Family Trust, Joseph Davis and Terri Davis, Trustees, located near the end of a private road located in Pomfret, Vermont. Construction of a residence on the Davis property is contemplated. Exh. CVPS-WJJ-2; Jakubowski pf. at 2-3.

2. In order to serve the Davis property, CVPS proposes to construct a single-span primary voltage overhead extension from an existing line/pole located southerly of a private drive on the Lewis property. This new line would extend across the Lewis property for an approximate distance of 140 feet, and several trees on the Lewis land would have to be cut. The new overhead line would be located further away from the Lewis house than existing overhead lines on the Lewis property. CVPS estimates cost of this proposal at \$6,650. Jakubowski pf. at 2-3; Litkovitz, pf. at 2-3.

3. Two alternatives to CVPS's proposal were identified by the Vermont Department of Public Service ("Department"). They are: (1) installation of a primary voltage underground extension that would not require tree cutting, at an estimated cost of \$13,900; and (2) a two-span

primary voltage overhead extension that would require cutting a significant number of pine trees, at an estimated cost of \$9,150. The Department recommended Board approval of CVPS's proposal. Litkovitz pf. at 3.

4. Subsequent to the technical hearing held on the issue of necessity, a stipulation between CVPS, Douglas and Leslie Lewis, and the Joseph and Terri Davis Family Trust ("Stipulation") was filed in settlement of this docket. *See* Stipulation filed May 24, 2006.

5. The Department does not object to the settlement set out in the Stipulation. Letter of Carolyn Browne Anderson, dated May 23, 2006, at 1.

6. The Stipulation provides that Douglas and Leslie Lewis will not object to the order sought by CVPS authorizing it to condemn an easement in this docket. Stipulation at 2.

7. The Stipulation provides that CVPS will pay the sum of Five Hundred Dollars (\$500.00) to Douglas and Leslie Lewis in full compensation for trees that will be damaged or removed during construction of the utility line that is the subject of this docket. Stipulation at 2.

8. The Stipulation provides that CVPS and Douglas and Leslie Lewis agree that there will be no discernable loss in value to the Lewis property as a result of the condemnation proposed by CVPS in this docket. Stipulation at 2.

III. DISCUSSION

In this case, CVPS seeks to condemn certain property of Douglas and Leslie Lewis so that it can provide electric service to property owned by the Joseph and Terri Davis Family Trust, for a residence to be constructed on the Davis property.¹ CVPS proposes construction of a new single-span overhead line that would extend across the Lewis property for an approximate distance of 140 feet, and which will require cutting several trees.² Of the alternatives available to bring electric service to the Davis property, the proposal presented in CVPS's petition requires crossing the Lewis property for the shortest distance, and presents the least expensive option.³

1. Petition at 3.

2. Jakubowski pf. at 2-3; Litkovitz pf. at 2-3.

3. Petition at 2-3. Litkovitz pf. at 2-3.

Douglas and Leslie Lewis do not object to a Board order authorizing CVPS to condemn this easement.⁴

With regard to the question of the value of the proposed condemnation, an appraisal submitted by CVPS concluded that "there will be no discernable loss in value to the Lewis property due to the execution of a utility line easement as described in the Petition of Central Vermont Public Service Corporation."⁵ This conclusion is not contested by Douglas and Leslie Lewis.⁶ However, the parties have agreed that CVPS will pay the sum of Five Hundred Dollars (\$500.00) to Douglas and Leslie Lewis in full compensation for trees that will be damaged or removed during construction of the utility line that is the subject of this docket.⁷

IV. CONCLUSION

For the reasons set forth in the above discussion, I conclude, pursuant to 30 V.S.A. § 112, that the requested condemnation is sought in order that CVPS may render adequate service to the public in the conduct of its business. Accordingly, I recommend that the Board approve CVPS's request for authority to condemn an easement with regard to certain property located in the Town of Pomfret, Vermont, owned by Douglas M. Lewis and Leslie Lewis. I further recommend that the Board approve the Stipulation filed by the parties in settlement of this docket.

Consistent with the provisions of 3 V.S.A. § 811, this Proposal for Decision has not been served on all parties to this proceeding because it is not adverse to any party.

Dated at Montpelier, Vermont, this 14th day of June, 2006.

s/Judith Kasper
Judith Kasper
Hearing Officer

4. Stipulation at 2.

5. Waldo pf.

6. Stipulation at 2.

7. Stipulation at 2.

V. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The findings, conclusion and recommendation of the Hearing Officer are hereby adopted.
2. The Stipulation between the parties filed with the Board on May 24, 2006, is hereby approved.
3. Central Vermont Public Service Corporation ("CVPS") is hereby authorized to condemn certain property located in the Town of Pomfret, Vermont, owned by Douglas M. Lewis and Leslie Lewis, as identified in CVPS's petition of October 25, 2005, for the purpose of providing electric service to property owned by the Joseph and Terri Davis Family Trust.
4. CVPS shall pay the sum of Five Hundred Dollars (\$500.00) to Douglas and Leslie Lewis in full compensation for trees that will be damaged or removed during construction of the utility line that is the subject of this docket.

Dated at Montpelier, Vermont, this 20th day of June, 2006.

<u>s/James Volz</u>)	
)	
)	PUBLIC SERVICE
<u>s/David C. Coen</u>)	
)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: June 20, 2006

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.